

August 13, 1984

MEMORANDUM

SUBJECT: Recycling Facilities and the Manifest System

FROM: Bruce R. Weddle
Director
Permits and State Programs Division (WH-563)

TO: Merrill S. Hohman
Director
Waste Management Division, Region I

We have reviewed your memorandum of March 21, 1984, concerning the applicability of 40 CFR 261.6 (b), 262.12 (c) and 262.20 (b) to sources which generate, store, and transport sludge and listed wastes prior to recycling or reuse. The following discussion of recycling facilities as they relate to the manifest requirements of Parts 262 and 263 and our answers to specific questions raised in your memorandum should provide you and the other Regions with a nationally consistent position on this issue.

40 CFR 261.6 (b) of the regulations indicates that we regulate storage of listed wastes and sludges prior to recycling. But do not regulate the actual process of recycling. See also 45 Federal Register at 33093 (May 19, 1980) (actual process of recycling is not regulated). Recyclers who do not store listed wastes and sludges before recycling them consequently are not subject to regulation.

These provisions are in conflict with the requirement in Parts 262 and 263 that listed wastes and sludges travel under a manifest to a "designated facility" – a facility with a permit or interim status. It is not the Agency's intention to prevent recyclers who do not store from receiving wastes to recycle. Accordingly, we are planning to amend the definition of designated facility as part of the final rules amending the definition of solid waste to provide that hazardous wastes may be transported to recyclers. In the interim, we recommend that the Regions issue an EPA identification number to the recycling facility in order for generators to be able to complete the manifest.

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We also recommend that the facility agree to comply with the manifest provisions of Sections 265.70 and 71. We think this is the best interim measure for resolving the conflict between the two sets of regulations.

In answer to your specific questions:

1. Whether or not WRC's Region III facility engages in storage and determining what type of handling constitutes storage?

Headquarters has not expressed an opinion on whether WRC's waste handling system constitutes storage since we do not have sufficient information.

2. Do the transfer facility regulations in Part 263 apply to recycling facilities?

The transfer facility rules are not applicable, as you point out in your letter.

3. How should a non-storage facility notify and comply with the manifest system?

As stated above, we recommend as an interim measure that these facilities be issued an identification number and allowed to receive manifested wastes. They also should agree to comply with the requirements of the manifest system. They could appropriately notify as either a "RCRA exempt Recycler" or as a "RCRA treatment facility."

4. Is it appropriate for these facilities to be unregulated?

We are considering whether or not to regulate these facilities. Specifically, we are examining whether the general administrative standards should apply, or whether all tank storage should be regulated, even if the tank is used in the recycling process. These possible changes require amending the existing rules.

5. Does the Headquarters position on WRC constitute interpretation or enforcement discretion?

As we stated above, Headquarters does not have sufficient information to determine whether or not WRC is storing wastes. In general, however, the Agency recognizes that it is difficult to harmonize the provisions of 261.6 (b) and Parts 262 and 263. For this reason, the Regions may assign low enforcement priority to cases involving generators who send wastes to recycling facilities provided that such recyclers have obtained EPA identification numbers, and do in fact, meet Sections 265.70 and 265.78.

6. Can EPA enforce manifest requirements against generators and transporters sending wastes to WRC?

Yes, Parts 262 and 263 remain applicable to these generators and transporters when they ship listed wastes and sludges.

Please call Bruce Weddle (FTS - 382-4746) or Steve Silverman (FTS - 382-7706) if you have other questions on this issue.

Attachment

cc: Hazardous Waste Management Division Directors,
Regions II - X w/incoming
Ralph Sisking, Region III
Gene Lucero